

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR PERMISSION TO)	
DEVIATE FROM THE REQUIREMENTS OF)	CASE NO. 91-426
807 KAR 5:022, SECTION 8(5)(A) 1,)	
2, AND 3 OF THE COMMISSION'S RULES)	

O R D E R

The Louisville Gas and Electric Company ("LG&E") has petitioned for rehearing of the Commission's Order of April 14, 1992 in which we denied its application for a deviation from Commission Regulation 807 KAR 5:022, Section 8(5)(a). LG&E contends that the denial of its application was unfair, unjust, unreasonable, arbitrary and unsupported by the evidence of record. Finding no merit to these contentions, we deny.

LG&E advances three arguments in support of its petition. First, it contends that the Commission acted in an arbitrary manner by failing to follow the precedent established in Case No. 9491¹ in which the Commission granted an application for similar deviation. We do not consider that case controlling. The Commission in that case did not consider the impact which the proposed deviation would have on the frequency of testing of

¹ Case No. 9491, Application of Columbia Gas of Kentucky, Inc. for Permission to Deviate from the Requirements of 807 KAR 5:022, Section 8(5)(a) 1 and 3 of the Commission's Rules.

downstream piping. We did consider it in our April 14, 1992 Order.²

LG&E next contends that the Commission acted unjustly and arbitrary in applying a "tougher and unpublicized standard" in the area of meter accuracy. The Commission finds this contention is without merit. In our Order of April 14, 1992, we neither state nor imply that LG&E's meters, as a group, are deficient or fail to meet standards. The Commission did, however, note that LG&E "has not provided any empirical evidence to suggest that the meters' will not further deteriorate over longer [testing] periods." Order of April 14, 1992 at 2.

LG&E seeks to deviate from standards which the Commission has established to ensure, inter alia, reliable and accurate customer billing. It must demonstrate that customers will not suffer if the requested deviation is granted. In this instance, it has not shown that meter accuracy will remain at the same level over longer periods. Existing meter accuracy is not the issue.

Finally, LG&E contends that the April 14, 1992 Order was unfair and arbitrary because no evidence was presented that could lead to the conclusion that gas safety problems will increase if the deviation were granted. This contention, however, ignores that it is LG&E who seeks the deviation and who must demonstrate

² Another factor distinguishing these cases is LG&E's failure to present any evidence to demonstrate the accuracy of its meters over the proposed extended periods. In Case No. 9491, the applicant had presented such evidence based on test results in other jurisdictions.

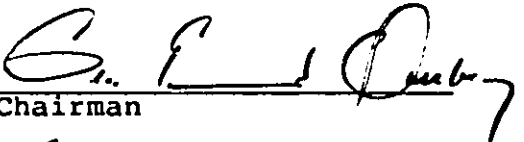
that gas safety will not be compromised by the proposed deviation. The Commission is not required to accept LG&E's uncontradicted evidence on the subject. "Standing alone, unimpeached, unexplained and unrebutted evidence may or may not be so persuasive that it would be clearly unreasonable for the board to be convinced by it. There are some questions and circumstances in which no evidence is required to support a negative finding." Energy Regulatory Comm'n v. Kentucky Power Co., Ky.App., 605 S.W.2d 46, 50 (1980) (citation omitted). This is such a case.

Having considered LG&E's petition for rehearing and being otherwise sufficiently advised, the Commission finds it should be denied.

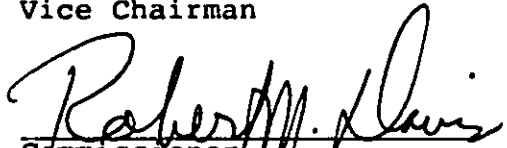
IT IS ORDERED that LG&E's petition for rehearing is denied.

Done at Frankfort, Kentucky, this 22nd day of May, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director